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In the Supreme Court of the United States

OCTOBER TERM, 1989

UNITED STATES OF AMERICA, PETITIONER

v.

GERMAN MUNOZ-FLORES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

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In our petition for a writ of certiorari, we pointed out that the question presented in this case—whether 18 U.S.C. 3013 (Supp. IV 1986) was enacted in violation of the Origination Clause of the Constitution, Art. I, § 7, Cl. 1—was presented in a number of cases pending before the courts of appeals and that several district courts had already rejected the Ninth Circuit's view on the question. Pet. 11-12. The Second, Third, and Sixth Circuits have now held that Section

3013 is valid under the Origination Clause, squarely rejecting the Ninth Circuit's view.*

In *United States* v. *Griffin*, No. 89-1105 (Aug. 29, 1989), and companion cases, the Second Circuit ruled that Section 3013 was not enacted for the purpose of raising revenue within the meaning of the Origination Clause. Explaining that the special assessments imposed under Section 3013 were intended to be, and are in fact imposed as, part of the criminal sentence, the court concluded that the assessments are penalties rather than taxes. Slip op. 3-6. Accordingly, the court held that the defendants' Origination Clause challenge was without merit regardless of whether Section 3013 originated in the House or in the Senate. Slip op. 3. The court expressly recognized (*id.* at 5a) that its ruling was contrary to that of the Ninth Circuit in *United States* v. *Munoz-Flores*, 863 F.2d 654 (1988), the decision that we ask this Court to review in our petition for a writ of certiorari in the present case.

In *United States* v. *Simpson*, No. 89-3180 (Sept. 5, 1989), and companion cases, the Third Circuit likewise held that Section 3013 was not enacted to raise revenue within the meaning of the Origination Clause. After ruling that the defendants' Origination Clause challenge presented a justiciable question (slip op. 7-10), the court concluded that Congress enacted Section 3013 for the purpose of defraying the costs of victim-assistance programs, not to raise revenue for the general use of the government (slip op. 10-21). The court disagreed with both the holding and the reasoning of the Ninth Circuit in *Munoz-Flores*. Slip. op. 14-21.

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* Ten copies of the recent court of appeals decisions have been lodged with the Clerk of this Court.

In *United States* v. *Ashburn*, No. 89-3227 (Sept. 7, 1989), the Sixth Circuit similarly held that Section 3013 was not enacted for the purpose of raising revenue within the meaning of the Origination Clause. The court concluded that the assessments imposed under Section 3013 are essentially penalties, not taxes, and that any raising of revenue under the provision is in any event merely incidental to the provision's purpose of funding victim-assistance programs. Slip op. 3-5. The court expressly disagreed with the Ninth Circuit's ruling in *Munoz-Flores*. Slip op. 5.

In short, there is now a conflict between the Second, Third, and Sixth Circuits, on one side, and the Ninth Circuit, on the other, on the question presented in this case. Cases that present the issue are currently awaiting decision in several other circuits. For those reasons, and for the reasons set forth in our petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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Solicitor General

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